

1 John White, Esq., Bar #1741

E-filed: June 15, 2010

2 White Law Chartered

3 335 West First St.

4 Reno, NV 89503

775-322-8000

5 FAX: 775-322-1228

john@whitelawchartered.com

6 Attorney for the Official Committee of Unsecured Creditors

7 UNITED STATES BANKRUPTCY COURT
8 DISTRICT OF NEVADA

9 In Re:

WES CONSTRUCTION COMPANY,

a Nevada corporation,

10 HEAVY EQUIPMENT SERVICES, LLC,

A Nevada limited liability company,

11 TRUCKING SERVICES, LLC,

A Nevada limited liability company.

12 Debtors-in-Possession

Case No. BK-N 09-52177-GWZ

Case No. BK-N 09-52178-GWZ

Case No. BK-N 09-52181-GWZ

[Jointly Administered under Case
No. BK-N 09-52177-GWZ]

Chapter 7

13 DECLARATION OF NEIL BRANDON
14 IN SUPPORT OF CONSOLIDATED
15 REPLY TO TRUSTEES' AND MB
16 FINANCIAL'S RESPONSE TO MOTION
17 FOR ORDER 1) RECONSIDERING
18 ORDERS APPROVING CHAPTER 7
19 TRUSTEE'S MOTION TO EMPLOY
20 AND APPLICATIONS TO PAY STEVE
21 BENNYHOFF 2) REQUIRING MR.
22 BENNYHOFF TO DISGORGE FEES
23 PAID TO HIM DURING THE CHAPTER
24 11 PHASE OF THIS CASE; AND 3)
25 PROVIDING FOR THE
26 CONTINUANCE OF THE § 1102(a)(1)
27 UNSECURED CREDITOR'S
28 COMMITTEE.

Hearing Date: June 21, 2010

Hearing Time: 2 p.m.

I, NEIL BRANDON, declare as follows, under pain and penalty of perjury.

1. I am Chairman of the Official Committee of Unsecured Creditors ("Committee"),
appointed pursuant to 11 USC Sec. 1102, and managing member of Specialty

WHITE LAW
CHARTERED
LAWYERS
20TH CENTURY BLDG
335 W. FIRST STREET
RENO, NV 89503

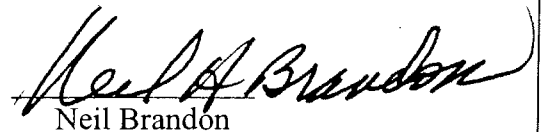
T (775) 322-8000
F (775) 322-1228

Equipment Services, LLC, and Active Assets Management LLC, unsecured creditors in this Case.

2. That throughout this Case I have been concerned about the manner in which the Debtor was managed during the run up to its June, 2009 voluntary Chapter 11 Petition, it appearing to me that there may have been misconduct by Debtor's officers and agents before and after the voluntary Petition was filed.
3. That attached hereto as Exhibit 1 is a true and correct copy of a letter the Committee sent to the Trustee in this Case on March 19, 2010, formally expressing many of these concerns.
4. That the Trustee has not responded to the merits of that letter.
5. That the email attached hereto as Exhibit 2 is the Trustee's only response to the Committee's March 19, 2010 letter, indicating, among other things, that he was planning to discuss it with the US Trustee.
6. That I understand that the Trustee discussed a letter with Mr. Bennyhoff at about that same time.
7. That Declarant believes that the Trustee, Keith Tierney, is not looking into the merits of the Committee's March 19 letter, and further believes that the Trustee has probably shared the contents of that letter, through Mr. Bennyhoff, with CFO Group (Dan Allen), Michael Brandt and Mark Smith, all persons who may stand to lose if the Trustee should vigorously pursue the suggestions contained in the Committee's letter.
8. That not only have Michael Brandt and Mr. Bennyhoff worked together in the past, mentioned in Mr. Bennyhoff's Declaration, they, along with Dan Allen and Mark Smith are apparently friends, perhaps very close friends, something not mentioned in Mr. Bennyhoff's Declaration. Attached hereto as Exhibit 3 is a true and correct copy of page 1 of an internet blog, dated May 4, 2009, which shows that Dan Allen, Steve Bennyhoff, Mark Smith and Michael Brandt are all members of an apparently rather exclusive club called the "Bulls," in fact that all four of them are "full sack (bulging) Bulls".

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
9. Needless to say, the Committee does not have confidence that the Chapter 7 trustee is receiving independent input from Mr. Bennyhoff. As he is friends with Dan Allen, Michael Brandt and Mark Smith, it is unlikely that he could objectively undertake the investigations suggested in the Committee's said March 19, 2010 letter to the Trustee. Moreover, it is likely that Mr. Bennyhoff would encourage the Trustee not to investigate his friends.
10. Declarant believes that the Debtor in both the Chapter 11 and Chapter 7 phases of this Case has been using Mr. Bennyhoff as a professional, to wit:
- a. The Trustee's original application to hire Mr. Bennyhoff stated that Mr. Bennyhoff was a CPA;
 - b. Though so far as known, Mr. Bennyhoff has never held himself out in this case to be a CPA, the Trustee has referred to him as a CPA in the all the interim payment applications submitted to this Court;
 - c. That the activities described in Mr. Bennyhoff's invoices, attached hereto as Exhibit 4, appear to include the activities of an accountant.
11. Committee and the unsecured creditors in this case are entitled to a 2014 Declaration from Mr. Bennyhoff, wherein he sets forth his connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants.

Respectfully submitted this 15th day of June, 2010.


Neil Brandon

INDEX OF EXHIBITS

- Exhibit 1 3/19/10 Committee Letter to Trustee
- Exhibit 2 Trustee's response to Committee Letter
- Exhibit 3 "Bulls" internet blog, page 1
- Exhibit 4 Bennyhoff invoices